

Komil Singh and ors. Vs. Rex

Komil Singh and ors. Vs. Rex

SooperKanoon Citation : sooperkanoon.com/454934

Court : Allahabad

Decided On : Sep-19-1949

Reported in : AIR1950All199

Judge : Agarwala and ;P.L. Bhargava, JJ.

Acts : [Public Gambling Act, 1867](#) - Sections 5 and 8

Appeal No. : Criminal Ref. No. 1063 of 1947

Appellant : Komil Singh and ors.

Respondent : Rex

Advocate for Pet/Ap. : Gopal Behari, Adv. for Applicant Nos. 1, 3 to 6;D.G.A.

Judgement :

Agarwala, J.

1. This is a reference by the Sessions Judge of Budaun.

2. It appears that Komil Singh was convicted Under Section 3, Public Gambling Act, III [3] of 1867, and sentenced to pay a fine of Rs. 45/- or in default to undergo rigorous imprisonment for one and a half months. Munshi Singh, Nanneh, Pati, Mangli and Kehar Singh were convicted Under Section 4 of the same Act and each of them was sentenced to pay a fine of Rs. 35/- or in default to undergo

rigorous imprisonment for one month. Certain moneys were recovered from their persons on search, and certain moneys were recovered from the place where they were gambling. The learned Magistrate who tried the case in the first instance and convicted the appellants, ordered the forfeiture not only of the moneys found at the place where the accused were gambling but also of the moneys which were found on their persons upon search.

3. Komil Singh and others went, in revision, to the learned Sessions Judge who made a reference to this Court on the ground that Under Section 8, Public Gambling Act the Magistrate was not authorised to order forfeiture of the moneys found on the persons of the accused. This reference came up for hearing before our brother Hon'ble Wanchoo J. who has referred it to a Bench as there was a conflict of decisions in this Court,

4. We have heard counsel on both sides, and we think that the view taken by the learned Sessions Judge is right and that the Magistrate had no jurisdiction to order the forfeiture of the moneys found on the persons of the accused.

5. Section 8, Public Gambling Act, in [3] of 1867, provides for the punishment of the owners or occupiers or persons having the use of common gaming houses, and also of the persona having the care or management of or in any manner assisting in conducting the business of a gaming house. Section 4 of the said Act provides for the punishment of gamblers in a common gaming house or of persons found therein for the purpose of gaming.

6. Under Section 5, the police or a Magistrate of a district are authorised to enter and search a common gaming house and to seize all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used for the purpose of gaming, which are found therein. It also provides that such officers may search:

'All parts of the house, walled enclosure, room or place which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody; and may seize or authorise such officer to

seize and take possession of all instruments of gaming found upon such search.'

It is clear from a reading of Section 5 that the only articles authorised to be seized, when a search is made of the persons of those who are taken into custody, are those that may be described as: 'instruments of gaming.' The officer is not authorised to seize moneys or other articles recovered from the person of the persons taken into custody upon such search. This distinction is important.

7. Under Section 8 it is provided that:

'On conviction of any person for keeping or using any such common gaming house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money and the proceeds thereof with all moneys seized therein to be forfeited; or, in his descretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.'

It is important to notice that the moneys authorised to be forfeited are those which are "seized therein," that is to say, only those moneys are allowed to be forfeited which are found in the common gaming house and seized upon such recovery. This section does not authorise the forfeiture of moneys recovered from the persons of the accused. We have already seen that Section 5 does not authorise the seizure of the moneys found upon the persons of the accused. Thus, it is quite clear that the Court has no jurisdiction Under Section 8 to order the forfeiture of moneys found upon the persons of the accused.

8. We are supported in this view by a number of authorities vide *Ram Sakhi Ram v. Emperor*, 19 A. L. J. 765 : (A. I. R. (8) 1921 ALL. 241 : 22 Cr. L. J. 648), *Emperor v. Walli Mussaji*, 26 Bom. 641: (4 Bom. L. R. 427), *Misri Lal v. The Crown*, 8 Lab, 320 : (A. I. R. (14) 1927 Lab. 338 : 28 Cr. L. J. 332), and *M. M. Adams v. Emperor*, 62 Cal. 1093 : (A. I. R. (22) 1936 Cal. 466 : 36 Cr. L. J. 1513), As against this array of authorities, we have been referred to a solitary decision of a learned Single Judge of this Court, viz., *Mahadeva v. King Emperor*, reported in

7 A. L. J. 404 : (11 Cr. L. J. 373). In that case Rnox J. undoubtedly came to the conclusion that Section 8 did authorise the forfeiture of the money found on the person of the accused; but this decision was really not necessary, because in the end the learned Judge ordered that the money should be returned to the accused. We are unable to agree with the view taken by the learned Judge on the interpretation of Section 8, Public Gambling Act.

9. There is another small point for determination. The learned Magistrate ordered that Komil Singh was to pay a fine of RS. 45/-, and in default of the payment of fine to undergo rigorous imprisonment for one and a half months; and that each of the other accused was to pay a fine of RS. 35/- and in default to undergo rigorous imprisonment for one month. The learned Sessions Judge has rightly pointed out that Under Section 65, Penal Code, the term for which a Court directs an offender to be imprisoned in default of payment of fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence. The maximum term of imprisonment fixed Under Section 3, Public Gambling Act is three months. Komil Singh could, therefore, be ordered to undergo rigorous imprisonment for 22 days, and not one and a half months as ordered by the Magistrate. The maximum sentence Under Section 4, Public Gambling Act is one month, and consequently the other accused could be ordered to undergo imprisonment for seven days in default of the payment of fine and not for one month.

10. We accordingly accept this reference, set aside the order of the learned Magistrate as regards the forfeiture of the moneys found upon the persons of the accused. We also set aside his order with regard to the sentences of imprisonment in default of the payment of fines. We order that Komi Singh shall in default of the payment of fine undergo rigorous imprisonment for 22 days, and the other accused shall in default of the payment of fines undergo rigorous imprisonment for a period of seven days each. The moneys found upon the persons of the accused shall be returned to them.